

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF PROVISIONAL )                      FINAL  
PERMIT 76H-P067611 ISSUED TO )                      ORDER  
CLINTON CARLSON )

\* \* \* \* \*

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation accepts and adopts the findings as contained in the September 3, 1997, Proposal for Decision and incorporates them by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Beneficial Water Use Permit 76H-P067611 issued to Clinton Carlson is modified by replacing the flow records condition as follows:

**\*\* FLOW RECORDS**

During the irrigation season, the permittee shall, twice monthly with a minimum of ten days between, measure the flow rate of water exiting the culvert located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, Township 10 North, Range 20 West, where the water flows under Aster Lane. Permittee shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records to the Department on or before November 30 of each year. The regional manager may also request measurement records at other times during the year. Failure to submit reports may be cause for revocation or

modification of the permit. The records must be sent to the water resources regional office at the address listed below.

Missoula Water Resources Regional Office  
P.O. Box 5004  
Missoula, MT 59806-5004

#### NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this 29<sup>th</sup> day of September, 1997.



Jack Stults, Administrator  
Water Resources Division  
Department of Natural Resources  
and Conservation  
P.O. Box 201601  
Helena, MT 59620-1601  
(406) 444-6605

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record, first class mail, at their address or addresses this 29<sup>th</sup> day of September, 1997, as follows:

Clinton Carlson  
NW 600 Bentham Ln.  
Florence, MT 59833

Fred Robinson  
Legal Counsel  
Department of Natural  
Resources & Conservation  
P.O. Box 201601  
Helena, MT 59620-1601

Vivian A. Lighthizer  
Hearing Examiner  
Water Resources Division  
Department of Natural  
Resources & Conservation  
P.O. Box 201601  
Helena, MT 59620-1601

David L. Pengelly  
Attorney at Law  
P.O. Box 8106  
Missoula, MT 59807

Nancy Andersen, Chief  
Water Rights Bureau  
Department of Natural  
Resources & Conservation  
P.O. Box 201601  
Helena, MT 59620-1601

  
Diane McDuffie  
Administrative Assistant

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF PROVISIONAL )	PROPOSAL
PERMIT 76H-P067611 ISSUED TO )	FOR
CLINTON CARLSON )	DECISION

\* \* \* \* \*

Permittee had failed to meet certain requirements of Beneficial Water Use Permit 76H-P067611 issued by the Department of Natural Resources and Conservation (Department) on December 14, 1988. The Department's Missoula Water Resources Regional Office recommended the permit be revoked. The particular requirement is:

The Permittee shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said record to the Department upon request.

The Department issued a Notice of Hearing, Order to Show Cause, and Appointment of Hearing Examiner on April 24, 1997. A hearing date was set for June 27, 1997. The Hearing Examiner conducted a site visit on June 27, 1997, to determine the need for a formal hearing. Those in attendance were: Clinton Carlson, Permittee; David L. Pengelly, Permittee's counsel; Larry Schock, Civil Engineering Specialist with the Department's Missoula Water Resources Regional Office; Nancy Andersen, Chief, Water Rights Bureau; and the Hearing Examiner.

During the site visit, it was determined the 12-inch culvert which conveys the water under Aster Lane at a point in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  Of Section 3, Township 10 North, Range 20 West, Ravalli County, Montana, could serve as a measuring device. Larry Schock

measured the culvert and gathered sufficient data to calculate a rating table. Mr. Carlson will be able to relate the depth of the water exiting the culvert to a specific flow rate with the rating table. Mr. Carlson agreed to measure the water depth exiting the culvert twice a month during the irrigation season. All parties agreed there was no need for a formal hearing.

Based upon this information, the Department proposes to modify the permit by replacing the flow records condition as follows:

**\*\* FLOW RECORDS**

During the irrigation season, the permittee shall, twice monthly with a minimum of ten days between, measure the flow rate of water exiting the culvert located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, Township 10 North, Range 20 West, where the water flows under Aster Lane. Permittee shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records to the Department on or before November 30 of each year. The regional manager may also request measurement records at other times during the year. Failure to submit reports may be cause for revocation or modification of the permit. The records must be sent to the water resources regional office at the address listed below.

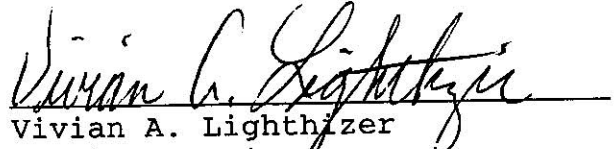
Missoula Water Resources Regional Office  
P.O. Box 5004  
Missoula, MT 59806-5004

Permittee shall keep the culvert clear of any obstruction to ensure the flow rate is measured accurately.

**NOTICE**

Permittee has 30 days to contest the proposed condition and request a show cause hearing. If no hearing is requested, the permit will be modified with the above condition.

Dated this 3<sup>rd</sup> day of September, 1997.

  
Vivian A. Lighthizer  
Hearing Examiner  
Water Resources Division  
Department of Natural Resources  
and Conservation  
P.O. Box 201601  
Helena, MT 59620-1601  
(406) 444-6615

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NW 600 Bentham Ln.  
Florence, MT 59833

Fred Robinson  
Legal Counsel  
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P.O. Box 201601  
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Cindy G. Campbell  
Hearings Unit Legal Assistant